

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYKERIA VERA RUTH
McDONALD, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LASHAWN R. McDONALD,

Respondent-Appellant,

and

ORAN McDONALD,

Respondent.

In the Matter of TYKERIA VERA RUTH
McDONALD, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWSHAWN R. McDONALD,

Respondent,

and

ORAN McDONALD,

Respondent-Appellant.

UNPUBLISHED
February 6, 2007

No. 270749
Wayne Circuit Court
Family Division
LC No. 04-430119-NA

No. 270750
Wayne Circuit Court
Family Division
LC No. 04-430119-NA

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal the termination of their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Tykeria was born on April 25, 2004, testing positive for marijuana and opiates. She was removed from respondents' care five days after her birth. Respondent-mother admitted using drugs during her pregnancy. She also admitted that she had three other children who had been placed in a guardianship with their maternal grandmother in 1998 due to her history of cocaine addiction and substantiated allegations of abuse and neglect. Respondent-father denied being aware of respondent-mother's drug use during her pregnancy with Tykeria.

Respondents were each provided with parent-agency agreements. Among the requirements of respondent-mother's agreement were random, weekly drug screens, individual and family counseling, and outpatient drug treatment. Initially, respondent-mother complied with the terms of her agreement. However, she subsequently began testing positive for drug use. Of 59 submitted screens, she tested positive 26 times. Respondent-mother claimed that her positive screens were for prescribed medication. She had been paralyzed in 1993 after being shot in her shoulder. The bullet had lodged in her spine, and her doctor had prescribed vicodin to treat her chronic and severe back pain. However, the caseworker testified that the 26 positive screens excluded drugs that had been prescribed to respondent-mother. Because of respondent-mother's positive screens for non-prescribed drugs, the caseworker felt that, although respondent-mother had completed a drug treatment program in October 2004, she had not benefited from the program.

There were also concerns that respondent-mother had failed to complete individual counseling. Petitioner had referred her to counseling in October 2004, but respondent-mother elected to pursue her own counselor. She attended five sessions and then the case was closed for respondent-mother's lack of attendance. Respondent-mother claimed that she had stopped her counseling sessions because the caseworker had requested that she complete anger management and her counselor did not provide such counseling. The caseworker at trial testified that she was not aware of respondent-mother's failure to complete counseling until December 2005, when the case was proceeding towards termination.

The caseworker conceded that respondent-father had substantially complied with his parent-agency agreement, that drug abuse was not an issue with him, and that he and Tykeria had bonded. However, the caseworker was concerned that, in the two years that Tykeria had been in the court's care, respondent-father had failed to plan for the child independently of respondent-mother despite repeated advisement to do so. Because of respondent-father's failure to separate from respondent-mother, there was a concern that placement of the child with respondent-father would expose her to all the risks of placement in respondent-mother's care.

Following the March 28, 2006, termination trial, the court concluded that the evidence supported termination of both respondents' parental rights to Tykeria under §§ 19b(3)(c)(i), (g),

and (j) and that, in light of the child's need for permanency, termination was not contrary to the child's best interests.

In light of the foregoing evidence that respondent-mother had failed to address her drug issue, as evidenced by the positive screens for drugs that had not been prescribed, and her failure to substantially comply with her parent-agency agreement, particularly the requirement that she complete individual counseling, the trial court did not clearly err in finding termination was appropriate under §§ 19b(3)(c)(i), (g), and (j) for respondent-mother. MCR 3.977(G)(3); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the trial court did not clearly err in concluding that termination of respondent-mother's parental rights was not clearly contrary to the child's best interests.

Because the caseworker conceded that respondent-father had substantially complied with his parent-agency agreement, the trial court clearly erred in terminating respondent-father's parental rights under § 19b(3)(g). *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). However, this error was harmless in light of the statutory evidence supporting termination under the other grounds cited by the court. Despite his compliance with the parent-agency agreement, respondent-father's failure to plan for the child independently of respondent-mother, who had failed to successfully address her drug addiction, led to a situation where the condition leading to the child's adjudication, namely respondent-father's failure to protect, continued to exist, and there was a reasonable likelihood that the child would be harmed if returned to respondent-father's home. Thus, the trial court did not clearly err when it terminated respondent-father's parental rights to Tykeria under §§ 19b(3)(c)(i) and (j). Furthermore, although respondent-father was appropriate in his visits with the child and the two had bonded, the court did not clearly err when it concluded that termination was not contrary to the child's best interests where the child had been in the court's care for nearly two years, since five days after her birth, and there was a need for permanency. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating both respondents' parental rights to the child.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio